

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 347

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO CRIMINAL PROCEDURE; PERMITTING THE ELECTRONIC
RECORDING OF DEPOSITIONS OF VICTIMS AND WITNESSES UNDER SIXTEEN
YEARS OF AGE IN SEXUAL ASSAULT AND DOMESTIC VIOLENCE CASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-3-10 NMSA 1978 (being Laws 1995,
Chapter 221, Section 1) is amended to read:

"30-3-10. SHORT TITLE.--~~[This act]~~ Sections 30-3-10
through 30-3-17 NMSA 1978 may be cited as the "Crimes Against
Household Members Act"."

Section 2. A Section 30-3-17 NMSA 1978 is enacted to
read:

"30-3-17. [NEW MATERIAL] ELECTRONIC RECORDING OF
DEPOSITIONS OF ALLEGED VICTIMS AND WITNESSES UNDER SIXTEEN
YEARS OF AGE--PROCEDURE.--

.157778.2

underscored material = new
[bracketed material] = delete

1 A. In a prosecution for a crime arising from a
2 domestic violence incident, upon motion of the district
3 attorney and after notice to the opposing counsel, the district
4 court may, for good cause shown, order the electronic recording
5 of a deposition of any alleged victim of or witness to a
6 domestic violence incident who is under sixteen years of age.
7 Good cause shall include a finding of unreasonable and
8 unnecessary mental harm to the victim or witness. The
9 deposition shall be taken before the judge in chambers, under
10 oath, in the presence of the district attorney and the
11 defendant's attorneys. The defendant must be able to hear the
12 testimony and communicate with defense counsel during the
13 deposition. Examination and cross-examination shall proceed in
14 the same manner as permitted at trial pursuant to the New
15 Mexico Rules of Evidence.

16 B. An electronically recorded deposition taken
17 under the provisions of this section shall be viewed and heard
18 at the trial and entered into the record in lieu of the direct
19 testimony of the alleged victim or witness.

20 C. The supreme court may adopt rules of procedure
21 and evidence to govern and implement the provisions of this
22 section.

23 D. The cost of the electronic recording shall be
24 paid by the state.

25 E. Electronic recordings that are part of the court

1 record are subject to a protective order of the court for the
2 purpose of protecting the privacy of the victim or witness.

3 F. As used in this section, "electronic recording"
4 means a complete and authentic visual and audio recording
5 created by motion picture, videotape or digital media."

6 Section 3. Section 30-9-17 NMSA 1978 (being Laws 1978,
7 Chapter 98, Section 1) is amended to read:

8 "30-9-17. [~~VIDEOTAPED~~] ELECTRONIC RECORDING OF
9 DEPOSITIONS OF ALLEGED VICTIMS [WHO ARE] UNDER SIXTEEN YEARS OF
10 AGE--PROCEDURE [USE IN LIEU OF DIRECT TESTIMONY].--

11 A. In [~~any~~] a prosecution for criminal sexual
12 penetration or criminal sexual contact of a minor, upon motion
13 of the district attorney and after notice to the opposing
14 counsel, the district court may, for [~~a~~] good cause shown,
15 order the [~~taking of a videotaped~~] electronic recording of a
16 deposition of any alleged victim under the age of sixteen
17 years. Good cause shall include a finding of unreasonable and
18 unnecessary mental harm to the victim. The [~~videotaped~~]
19 deposition shall be taken before the judge in chambers, under
20 oath, in the presence of the district attorney [~~the defendant~~]
21 and [~~his~~] the defendant's attorneys. The defendant must be
22 able to hear the testimony and communicate with defense counsel
23 during the deposition. Examination and cross-examination [~~of~~
24 ~~the alleged victim~~] shall proceed [~~at the taking of the~~
25 ~~videotaped deposition~~] in the same manner as permitted at trial

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1 ~~[under the provisions of Rule 611 of]~~ pursuant to the New
2 Mexico Rules of Evidence. ~~[Any videotaped]~~

3 B. An electronically recorded deposition taken
4 under the provisions of this ~~[aet]~~ section shall be viewed and
5 heard at the trial and entered into the record in lieu of the
6 direct testimony of the alleged victim.

7 ~~[B. For the purposes of this section, "videotaped~~
8 ~~deposition" means the visual recording on a magnetic tape,~~
9 ~~together with the associated sound, of a witness testifying~~
10 ~~under oath in the course of a judicial proceeding, upon oral~~
11 ~~examination and where an opportunity is given for cross-~~
12 ~~examination in the presence of the defendant and intended to be~~
13 ~~played back upon the trial of the action in court.]~~

14 C. The supreme court may adopt rules of procedure
15 and evidence to govern and implement the provisions of this
16 ~~[aet]~~ section.

17 D. The cost of ~~[such videotaping]~~ the electronic
18 recording shall be paid by the state.

19 E. ~~[Videotapes which]~~ Electronic recordings that
20 are a part of the court record are subject to a protective
21 order of the court for the purpose of protecting the privacy of
22 the victim.

23 F. As used in this section, "electronic recording"
24 means a complete and authentic visual and audio recording
25 created by motion picture, videotape or digital media."